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Crimes--Unlawful Entry--Circumstantial Evidence (People v. Orr, 270 N.Y. 193 (1936))

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CRIMES—UNLAWFUL ENTRY—CIRCUMSTANTIAL EVIDENCE.—Defendant, when encountered at about 6:30 P. M. running down the second floor freight stairs in a business building by a detective, gave false answers to questions as to where he came from and what he was doing there. At about 7:50 P. M. it was discovered that a screen panel had been removed from a door on the 17th floor, but nothing had been taken. Evidence was submitted showing that the screen had been removed between 6:00 and 7:50 P. M. On defendant's person there was no key, bag or tools found when taken into custody. People had been working late in the building and constantly going up and down. The defendant was convicted in the Court of Special Sessions for the crime of unlawful entry on circumstantial evidence; the conviction was affirmed by the Appellate Division. The Court of Appeals reversed on the ground that a defendant may be convicted on circumstantial evidence—but with circumstances lacking and mere suspicion substituted, no conviction can be sustained. *People* v. *Orr,* 270 N. Y. 193, 200 N. E. 783 (1936).

Circumstantial evidence is the proof of certain facts and circumstances from which a jury may infer other connected facts, which usually and reasonably follow according to the common experience of mankind.[1] When the prosecution rests solely on circumstantial evidence there must be a sufficient weight of circumstances from which a probable inference of guilt can be adduced rendering the accused guilty.[2] The circumstances must relate to the defendant's alleged guilt in such a manner as to exclude to a moral certainty any other reasonable hypothesis or inference.[3] In the instant case, the inference arising from the accused's presence in the vicinity of the crime was considerably weakened by the presence of others. Furthermore there was not the sequence of time to show that the screen had been removed before defendant ran downstairs to the street. However, flight under suspicious circumstances is a fact significant in itself, and it becomes most significant when false or no explanations at all are forthcoming.[4] Still, mere surmise or suspicion, or even a high probability of guilt is not sufficient to warrant a conviction.[5] If burglar tools are found on an accused or at his home and

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[1] State v. Avery, 113 Mo. 475, 21 S. W. 193 (1893); State v. Tate, 156 Mo. 119, 56 S. W. 1099 (1900).

[2] State v. Moxley, 102 Mo. 374, 14 S. W. 969 (1890); Hauptmann v. State, 115 N. J. L. 412, 180 Atl. 809 (1935).

[3] Moscato v. Prince Line, 164 App. Div. 412, 150 N. Y. Supp. 325 (2d Dept. 1914); People v. Smith, 245 App. Div. 69, 281 N. Y. Supp. 294 (3d Dept. 1935).

[4] Territory v. Lucero, 16 N. M. 652, 120 Pac. 304 (1911); U. S. v. Greene, 138 U. S. 293, 11 Sup. Ct. 299 (1891).

[5] Dean v. Commonwealth, 258 Ky. 761, 78 S. W. 1112 (1904). Evidence raising suspicion of guilt held to be insufficient to sustain a conviction of robbery—State v. Davis, 73 Ark. 358, 84 S. W. (2d) 633 (1905). Suspicions are not sufficient to support a conviction—Caringella v. U. S., 78 F. (2d) 563 (C. C. A. 7th, 1935). We must have positive proof of guilt, not mere con-

it is established that these same tools were used in the perpetration of the crime, it would raise a strong inference of guilt.[6] Even more so if the property stolen was found on the accused in the vicinity of the crime committed.[7] But no such facts were established in this case. Circumstantial evidence must meet the standard required in a criminal case [8]—namely to prove the defendant guilty beyond a reasonable doubt.[9] The evidence against the defendant was as consistent with his innocence as with his guilt, therefore a conviction could not be sustained.[10]

H. R. K.

CRIMINAL LAW—DOUBLE JEOPARDY—SUNDAY JUDGMENT VOID. —The relator-appellant was arrested and charged with disorderly conduct. The trial, held before a police magistrate and jury, began Saturday evening and was held over into Sunday morning when the relator was convicted and sentenced. He was released from custody on a writ of *habeas corpus* granted him on his contention that a Sunday judgment was absolutely void, but was again arrested on the same charge and secured his release on a second writ of *habeas corpus* setting up a plea of "double jeopardy." This writ was granted at Special Term but denied by a divided court at the Appellate Term.[1] On appeal to the Court of Appeals, *held,* writ granted (one dissenting opinion). Although no valid judgment had been obtained at the first trial, the relator had been sufficiently jeopardized to render a further trial unlawful. *People* ex rel. *Meyer* v. *Warden,* 269 N. Y. 426, 199 N. E. 647 (1936).

From the days of the early common law,[2] down to the present

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jectures to draw inference of guilt from—People v. Harris, 136 N. Y. 423, 33 N. E. 65 (1893).

[6] A blade used in prying open a window snapped off, it was found to match the remainder of the knife in the accused's possession thereby raising a strong inference of guilt. WILLS, CIRCUMSTANTIAL EVIDENCE (3d ed.) 96; State v. Campbell, 7 N. D. 58, 72 N. W. 935 (1897).

[7] State v. Guild, 149 Mo. 370, 50 S. W. 909 (1899); State v. Janks, 26 Idaho 567, 144 Pac. 779 (1914).

[8] People v. Fitzgerald, 156 N. Y. 253, 50 N. E. 846 (1898); Ruppert v. B'klyn Heights R. R. Co., 154 N. Y. 90, 47 N. E. 971 (1897).

[9] People v. Mantin, 184 App. Div. 767, 172 N. Y. Supp. 371 (1st Dept. 1918); People v. Owens, 148 N. Y. 648, 43 N. E. 71 (1896).

[10] State v. Rankin, 50 P. (2d) 3 (Idaho 1935); Hogant v. State, 170 Ark. 1143, 282 S. W. 984 (1926); State v. Blackwelder, 182 N. C. 899, 109 S. E. 644 (1921); People v. Razezicz, 206 N. Y. 249, 99 N. E. 557 (1912).

[1] 245 App. Div. 828, 281 N. Y. Supp. 186 (2d Dept. 1935).

[2] Story v. Elliot, 8 Cow. 27 (N. Y. 1827); Van Vechten v. Paddock, 12 Johns. 178 (N. Y. 1815); Hoghtaling v. Osborn, 15 Johns. 118 (N. Y. 1818).